BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on
04.08.2022
Delivered on
02.09.2022
CORAM:
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM
Crl.O.P.(MD) No.10787 of 2022
and
Crl.M.P(MD)No.6779 and 6780 of 2022

1. K. Rajiv,

2. K. Ramprasad @ Ram,
: Petitioners

Vs

1.State represented by
The Inspector of Police,
Courtallam Police Station,
Courtallam,
Tenkasi Disrict
(Crime No. 400 of 2020).

2. Immanuvel Prasath,
: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. Praying to call for the records pertaining to the case in impugned charge sheet in S.T.C.No. 1310 of 2021 on the file of the District Munsif cum Judicial Magistrate, Shenkottah in Crime No. 400 of 2020, on the file of the first respondent and quash the same as illegal.

For Petitioners : M/s. Lawrance J,

For R1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

For R2 : Mr.R.Anand
For Mr.R.M.Suresh

ORDER

This criminal original petition has been filed seeking to quash the charge sheet in S.T.C.No. 1310 of 2021, on the file of the District Munsif cum Judicial Magistrate, Shenkottah.

2.The learned Counsel appearing for the petitioners submitted that the petitioner are the accused persons in S.T.C.No. 1310 of 2021, on the file of

the District Munsif cum Judicial Magistrate, Shenkottah. The case of the prosecution is that the defacto complainant, two years prior to the occurrence, had entered into an agreement with the first petitioner for construction of a house since the first petitioner had failed to make the payment as per the terms and conditions of the agreement, the defacto complainant had not completed the work. In the circumstances, on 06.11.2020, when the defacto complainant was on his way to his work site at Bismi Nagar, Vallam, the petitioners and others intercepted him, started to quarrel with him and also damaged the car glass by throwing stones and threatened the complainant with dire consequences. Based on a complaint lodged against the petitioners, an FIR in Crime No.400 of 2020 had been registered, for the offences under Sections 341, 294(b) and 506(1) IPC. After investigation, final report had been filed and the same was taken on file as S.T.C.No.1310 of 2021, which is now under challenge. Further, he submitted that the petitioners are brothers. They proposed to construct a residential building at Thendral Nagar, Vallam, Tenkasi, Tirunelveli. For that purpose, they approached the defacto complainant, who is running a construction business at Ambai Road, Melapalayam, Tirunelveli District and he entrusted the construction work for a value of Rs.93,30,000/~. In this regard, a memorandum of understanding was also executed between the parties on 09.08.2018. On various dates, the first petitioner paid a sum of Rs.15,25,000/~ by cash to the defacto complainant and also obtained receipt for that and further, he paid 23,09,315/~ on various dates. Then, again, the first petitioner paid a sum of Rs.36,64,520/~ on various dates. Thus he has totally paid a sum of Rs.74,98,835/~ to the defacto complainant. But he did not complete the construction work as stated in the agreement. He had executed only 30% of total work and stopped the further construction. Therefore, the first petitioner lodged a complaint against the accused persons, for the same, an FIR in Crime No.41 of 2019 had been registered for the offences under Sections 294(b), 420, 406, 506(1), 120(B), 34 and 176 IPC and after investigation, final report had been filed before the learned Judicial Magistrate No.I, Tirunelveli, which had been taken cognizance as C.C.No.1070 of 2020. Under these circumstances, for the alleged occurrence took place on 06.11.2020, the complaint has been given by the defacto complainant and after investigation, final report has been filed in S.T.C.No. 1310 of 2021, on the file of the District Munsif cum Judicial Magistrate, Shenkottah. It is a case in counter. On 06.11.2020, the first petitioner gave a complaint against the defacto complainant for threatening the petitioners to withdraw the first petitioner-s complaint, which was registered in Crime No.41 of 2019. Therefore, he gave a complaint against the defacto complainant, for which, an FIR had been registered in Crime No.436 of 2020, for the offences under Section 147, 341, 294(b), 506(1) IPC. The second respondent herein also lodged a complaint against the petitioners, for the same, an FIR had been registered in Crime No.400 of 2020, for the offences under Sections 341, 294(b), 506(1) IPC. The respondent police without following the procedures as contemplated under Police Standing order 566 closed the complaint given by the first petitioner as mistake of fact and filed charge sheet upon the complaint given by the complainant against the petitioner, which was taken on file in S.T.C.No. 1310 of 2021, on the file of the District Munsif cum Judicial Magistrate, Shenkottah. Since the police failed to follow the police standing orders 566 (588A) and closed the first

petitioner-s complaint as mistake of fact and only filed final report upon the complainant of the defacto complainant the criminal proceedings is illegal and pleaded to quash the criminal proceedings in S.T.C.No. 1310 of 2021, on the file of the District Munsif cum Judicial Magistrate, Shenkottah. To support his argument, he placed reliance upon the decisions of the Madras High Court in Kamala Anbarasu Vs. The Inspector of Police, V~2 Virugambakkam Poilice Station, Chennai reported in 2003 (4) CTC 280 and in Crl.O.P.No.9329 of 2015, dated 24.09.2020 in the case of Sai Mrithu and another Vs. The Inspector of Police, Thudiyalur Police Station, Coimbatore

3.The learned Additional Public Prosecutor submitted that on investigation, it is found that the said offences are made out against the petitioners. Hence the respondent police filed the final report and the same had been taken cognizance in S.T.C.No. 1310 of 2021, on the file of the District Munsif cum Judicial Magistrate, Shenkottai. There is an evidence for trial. Therefore, before commencement of trial, the proceedings cannot be quashed. Further, he submitted that the respondent police followed the Police Standing Order 566 (588A). There is no illegality in conducting the investigation, filing the final report, closing one case as mistake of fact and pleaded to dismiss this petition.

4.The learned Counsel appearing for the second respondent submitted that the Police Standing Order 588 A is only directory and not mandatory. It is only departmental instruction and it has no force of law and non~following of the procedure prescribed under Police Standing Order 588 A will not constitute illegality to quash the prosecution. Further, he submitted that the petitioners herein already filed a petition in Crl.O.P(MD)No.17639 of 2021 for quashing the proceedings in S.T.C.No.1310 of 2021. In that case, the petitioners took the stand that the respondent police have not followed the Police Standing Order 588 A and closed the complaint as mistake of fact is illegal. Filing of charge sheet upon the complaint of the defacto complainant is not maintainable and pleaded to quash the proceedings against the petitioners, which was considered by this Court and dismissed the petition filed by the petitioners, on 11.03.2022 and further, this Court directed the trial Court to complete the trial within a period of six months from the date of receipt of a copy of that order. Under these circumstances, this second quash petition is not maintainable and the same is liable to the dismissed. To support his argument, he relied upon the decisions in the case of Sujin and others Vs. The Inspector of Police and another reported in 2019 SCC Online Madras 38972 and in the case of Simrikhia Vs. Dolley Mukherjee and others reported in (1990) 2 Supreme Court cases 347 and thus pleaded to dismiss the petition.

5.I have considered the matter in the light of the submissions made by the learned Counsels appearing for the parties.

6.On a perusal of records, it is seen that based on the complaint lodged by the first petitioner against the defacto complainant herein, an FIR in Crime No.41 of 2019 had been registered for the offences under Sections 294(b), 420, 406 and 506(1) IPC and after investigation, final report had

been filed before the learned Judicial Magistrate No.I, Tirunelveli, which had been taken cognizance as C.C.No.1070 of 2020. After that, the defacto complaint lodged a complaint against the petitioners, for which, an FIR in Crime No.400 of 2020 had been registered for an offence under Sections 341, 294(b), 506(1) IPC. At that time, the first petitioner again gave a complaint against the defacto complainant, for which, an FIR in Crime No.436 of 2020 had been registered for the offences under Sections 147, 341, 294(b) and 506(1) IPC thus there is a case and counter case with regard the occurrence took place on 06.11.2020. After investigation, the respondent police closed the case in Crime No.436/2020 as mistake of fact and then, after investigation, the respondent police filed charge sheet for the case registered in Crime No.400/2020, before the learned District Munsif cum Judicial Magistrate, Shekottah and the same was taken on file as S.T.C.No.1310 of 2021, which is now under challenge. According to the petitioner, the respondent police failed to follow the Police Standing Order 588 A and hence filing of the final report upon the complaint received from the defacto complainant is illegal. On that ground, the criminal proceedings have to be quashed. Further, the allegations raised in the case is also false.

7.The argument placed by the learned Counsel appearing for the petitioner is un~sustainable for the reason that it is well settled now that Police Standing Order 588 A is only directory and not mandatory. It is only an administrative instruction. Therefore, non~following of the procedure laid down under Police Standing Order 588 A, will not constitute illegality to quash the impugned prosecution. This position is now settled by the Hon-ble Supreme Court as well as in the decision of the Madras High Court reported in 2019 SC 1 Madras 38972.

8.Further it has to be noted that the petitioners filed a petition in Crl.O.P(MD)No.17639/2021 before this Court raising the very same point for quashing the proceedings in S.T.C.No.1310/2021, on the file of the learned District Magistrate cum Judicial Magistrate, Shenkottai. In order passed in Crl.O.P(MD)No.17639/2021, dated 11.03.2022, the learned Single Judge, in Paragraph No. 4, recorded the arguments of the learned Counsel appearing for the petitioners therein that the non~following of the Police Standing Order 588 was considered by this Court. In the above said petition, after considering the arguments and judgments relied on by the learned Counsel appearing for the petitioners therein, the same was dismissed with a direction to the trial Court to complete the trial within a period of six months from the date of receipt of a copy of that order.

9.The observation of the Hon-ble Apex Court in the case of Simrikhia Vs. Dolley Mukherjee and others reported in 1990 2 SCC 437 runs as follows:

-3.The learned counsel for the appellant contended before us that the second application under Section 482 Cr.P.C. was not entertainable, the exercise of power under Section 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of Section 362 of the Cri .P.C. and the High Court was, therefore, clearly in error in having quashed the proceedings by

adopting that course. We find considerable force in the contention of the learned counsel. The inherent power under, Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the ease, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.
...
5.Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go~by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.-

10.All the decisions relied on by the learned Counsel appearing for the petitioner are considered. But, the same is not helpful to support this case.

11.In view of the above, filing a second quash petition for quashing the same proceedings without any changing circumstances is not maintainable. It should not be encouraged and the petition should be dismissed. Hence this criminal original petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

02.09.2022
Internet:Yes
Index:Yes/No
Speaking/Non speaking order
lr
To

1.The Inspector of Police,
Courtallam Police Station,
Courtallam,
Tenkasi Disrict

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court.
Madurai.

V.SIVAGNANAM, J.
lr

Crl.O.P.(MD) No.10787 of 2022

02.09.2022